

立法會
Legislative Council

LC Paper No. CB(2)2147/16-17
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 18 July 2017, at 2:00 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon LEUNG Yiu-chung (Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon CHAN Kin-por, GBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon LUK Chung-hung
Hon Jeremy TAM Man-ho
- Member attending** : Dr Hon Helena WONG Pik-wan

Members absent : Hon HO Kai-ming (Deputy Chairman)
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Michael TIEN Puk-sun, BBS, JP

Public Officers attending : Item III

Miss Mabel LI Po-yi, JP
Deputy Commissioner for Labour
(Labour Administration)

Mr William MAK Chi-tung
Assistant Commissioner for Labour
(Employees' Rights & Benefits)

Ms Kate TAM Wing-tsz
Senior Labour Officer (Employees' Compensation
Division) (Central Services Section 1)
Labour Department

Miss Christine BUT Wing-tung
Senior Labour Officer (Employees' Compensation
Division) (Central Services Section 2)
Labour Department

Item IV

Mr Jeff LEUNG Wing-yan, JP
Deputy Commissioner for Labour
(Occupational Safety and Health)

Dr Raymond LEUNG Lai-man, JP
Occupational Health Consultant (1)
Labour Department

Dr Mandy HO Mang-yee, JP
Occupational Health Consultant (2)
Labour Department

Mr William MAK Chi-tung
Assistant Commissioner for Labour
(Employees' Rights & Benefits)

Item V

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

Mr Jeff LEUNG Wing-yan, JP
Deputy Commissioner for Labour
(Occupational Safety and Health)

Dr Raymond LEUNG Lai-man, JP
Occupational Health Consultant (1)
Labour Department

Mr WU Wai-hung
Assistant Commissioner for Labour
(Occupational Safety)

Item VI

Dr LAW Chi-kwong, GBS, JP
Secretary for Labour & Welfare

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

Ms Melody LUK Wai-ling, JP
Assistant Commissioner for Labour
(Labour Relations)

Attendance : Item VI
by invitation

The Civic Party

Mr Simon HUNG Ling-fai
District Developer of the New Territories West

The Democratic Party

Mr Leo CHU
Representative

Community March

Mr LAM Siu-pan
Convenor

Hong Kong Catering Industry Association

Mr Tony TAM
Vice President

Liberal Party

Mr NG Lung-fei
Member

Hong Kong Federation of Restaurants & Related
Trades Limited

Mr LAM Kwok-leong
Vice Chairman

Hong Kong Ample Love Society Ltd.

Ms TSANG Cheuk-yi
Chairlady

Liberal Party Youth Committee

Ms LEE Ka-yan
Executive Committee

The Hong Kong Federation of Trade Unions
Women Affairs Committee

Ms 梁頌恩

自由黨醫療及健康政策關注組

Mr HO Wang
Member

Association of Restaurant Managers Ltd

Mr LEUNG Chi-wai
Chairman

Individual

Mr LAI Ming-chak
Member of Sai Kung District Council

PathFinders

Ms Gellin BYATT
Community Development Coordinator

The Federation of Hong Kong & Kowloon Labour
Unions Women Affairs Committee

Miss CHEUNG Mung-ying
Secretary

Institution of Dining Art

Mr Ray CHUI
The First Vice-Chairman

New People's Party Youth Commission

Miss Gigi WONG
Vice Chair (Executive)

Individual

Miss Judy CHAN
Member of Southern District Council

香港職工會聯盟婦女事務委員會

Ms NG Wai-ling
Member

Labour Party

Ms WU Sui-shan

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)1870/16-17)

The minutes of the meeting held on 16 May 2017 were confirmed.

II. Information paper issued since the last meeting
(LC Paper No. CB(2)1890/16-17(01))

2. Members noted that a referral from the Public Complaints Office on issues relating to support measures for elderly employment had been issued since the last meeting. The Chairman advised that the subject would be included in the Panel's "List of outstanding items for discussion".

III. Adjustment of the maximum rates of medical expenses under the Employees' Compensation Ordinance and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance
(LC Paper Nos. CB(2)1872/16-17(01) and (02))

3. Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") briefed members on the Administration's proposal to increase the daily maximum rates of medical expenses under the Employees' Compensation Ordinance (Cap. 282) ("ECO") and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO") corresponding to the implementation of new fees and charges for public healthcare services, details of which were set out in the Administration's paper.

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4. Members noted an information note entitled "Adjustment of the maximum rates of medical expenses under the Employees' Compensation Ordinance and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance" prepared by the Legislative Council ("LegCo") Secretariat.

The legislative proposal

5. Given that the daily rates of medical expenses reimbursable under ECO and PMCO were set by making reference to the fee level of public healthcare services, Mr POON Siu-ping considered it necessary to revise the daily rates having regard to the implementation of new fees and charges for public healthcare services since 18 June 2017.

6. Expressing concern about the effective date for implementing the proposed adjustment to the daily maximum rates of medical expenses under ECO and PMCO, the Chairman asked when the Administration would introduce the relevant legislative proposal.

7. DC for L (LA) responded that subject to the Panel's support for the Administration's proposal, the Labour and Welfare Bureau / Labour Department ("LD") would work with the Department of Justice ("DoJ") and proceed with the drafting of the proposed resolutions with a view to introducing them into LegCo by the fourth quarter of 2017.

Coverage and compensation under the Employees' Compensation Ordinance and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance

8. Mr POON Siu-ping was concerned about the huge medical expenses for medical treatment incurred by employees suffering from mesothelioma. Mr POON sought information on the difference between the relevant medical expenses charged by the public healthcare sector and the private healthcare sector as well as the number of confirmed cases in recent years.

9. DC for L (LA) responded that there were 13 and seven confirmed cases of mesothelioma in 2015 and 2016 respectively. It was understood that compensation provided to persons who suffered from mesothelioma under PMCO could be able to cover the actual amount of medical expenses incurred for receiving treatment in the public healthcare system. She added that in the absence of a standard fee structure in the

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private healthcare sector, LD did not have information on expenses incurred in respect of medical treatment for mesothelioma in the private healthcare sector.

10. Dr Fernando CHEUNG expressed concern that even after the proposed revisions of the maximum rates of medical expenses took effect, the amount was far from adequate for meeting the medical expenses charged by the private healthcare sector. Dr CHEUNG was particularly concerned that breathing apparatus used by pneumoconiosis or mesothelioma sufferers was not a reimbursable item under PMCO. Dr CHEUNG enquired whether the Administration would consider providing subsidy under the Pneumoconiosis Compensation Fund to these occupational disease sufferers to allow them to seek timely medical treatment in the private healthcare sector and to procure necessary medical appliances.

11. Acknowledging that breathing apparatus was not among the three medical appliances specified in Part II of the Second Schedule to PMCO, DC for L (LA) said that LD and the Pneumoconiosis Compensation Fund Board were studying the list of medical appliances in the Second Schedule to PMCO as to whether its coverage should be expanded to include other types of medical appliances. Subject to the review outcome, the Administration would consider legislative amendments if appropriate and necessary.

12. Dr Fernando CHEUNG took a strong view that the Administration should expedite the review and provide members with a concrete timetable for introducing the necessary legislative amendments. The Chairman requested the Administration to revert to the Panel on the matter as soon as practicable.

Other issues

13. Mr LUK Chung-hung enquired whether the Administration had any plan to review the list of compensable occupational diseases in the Second Schedule to ECO, with a view to covering work-related diseases, such as sudden death caused by overexertion at work, heat stroke and musculoskeletal disorder. Mr LUK added that in light of the long waiting time for receiving physiotherapist and occupational therapist services provided by the Hospital Authority, LD should consider setting up a clinic for the purpose of providing dedicated rehabilitation services for injured employees as soon as practicable.

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14. DC for L (LA) said that LD would examine the labour legislation from time to time. For instance, under the established mechanism, the levels of compensation under ECO and PMCO were adjusted every two years where appropriate. As regards the suggestion to expand the list of prescribed occupational diseases to cover sudden death of employees due to overexertion at work, it was noteworthy that the causes of sudden deaths other than by work accidents in the course of employment were complex and might involve a multitude of factors and LD would commence a study on the subject.

15. In concluding the discussion, the Chairman said that members supported in principle the Administration's proposal to increase the daily maximum rates of medical expenses under ECO and PMCO as soon as practicable.

IV. Occupational disease and occupational health situation in 2016
(LC Paper Nos. CB(2)1856/16-17(01) and CB(2)1872/16-17(03))

16. At the invitation of the Chairman, Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") briefed members on the occupational diseases and occupational health situation in Hong Kong in 2016, and the related promotion and enforcement work of LD, as detailed in the Administration's paper.

17. Members noted an updated background brief entitled "Occupational diseases and occupational health performance in Hong Kong" prepared by the LegCo Secretariat.

Occupational diseases

Occupational deafness

18. Expressing concern about the 184 confirmed cases of occupational deafness in 2016, which had increased significantly as compared with the corresponding figures in the past years, the Chairman sought information on the work types involved and enquired about whether the Administration had conducted regular workplace inspections targeting at the noisy occupations. He also asked about the Administration's effort in preventing employees from contracting such disease.

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19. DC for L (OSH) said that occupational deafness was permanent hearing loss arising from prolonged exposure to noisy environment at work in specified occupations. Most of these cases were related to working in close proximity to turbines or pressurized jet engines. Prevention was the only way to protect the hearing capacity of those working in noisy occupations. LD had conducted regular and targeted workplace inspections as necessary. According to the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("ODCO"), applicants could apply for compensation to the Occupational Deafness Compensation Board as long as they met the relevant criteria like the occupation and deafness requirements. As the latent period of occupational deafness could be as long as 10 years, the number of applications for compensation received by the Board could vary greatly every year as employees concerned could decide when to make application for compensation.

20. DC for L (OSH) further said that relatively more confirmed cases of occupational deafness were recorded in 2016 because of applications from a number of employees engaged in two noisy occupations as specified under ODCO. LD had followed up on these applications and conducted inspections to the workplaces concerned, including the airport. Duty holders concerned had been reminded to provide their employees with approved ear protectors suitable for the nature of their work. It was noted from the inspections that employees concerned had worn suitable and approved ear protectors provided by the employers. Given the long latent period of occupational deafness, it was believed that employees concerned would have been exposed to high level of noise in their working environments years ago.

Whether mental health illness arising from work pressure should be categorized as an occupational disease

21. Expressing the view that mental health of employees was equally important to their physical health, Mr SHIU Ka-chun was particularly concerned about the mental health of teachers and social workers as many of them suffered from anxiety and depression and they topped employees of other occupations in seeking medical consultation. Mr SHIU took the view that emotional disorders arising from work pressure should be categorized as an occupational disease.

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22. DC for L (OSH) advised that LD attached great importance to the mental well-being of employees and had published various pamphlets and organized seminars for the purpose of enhancing their knowledge and understanding of work pressure and its management. Specifically, LD had been working in collaboration with the Department of Health and the Occupational Safety and Health Council ("OSHC") in promoting mental health public education and publicity campaign and cultivating supportive environment in workplace. DC for L (OSH) further advised that Hong Kong followed the international practices and would make reference to the criteria adopted by the International Labour Organization ("ILO") in determining whether a disease should be prescribed as an occupational disease. Specifically, prescription of a disease as an occupational disease was based on the criteria of whether workers engaged in a certain occupation in Hong Kong had a significant and recognized risk of contracting the disease; and whether a causal relationship between the disease and the occupation could be reasonably presumed or established in individual cases. As emotional disorders were not limited to employees engaged in certain occupations and they could be caused by reasons unrelated to work and therefore a direct causal relationship could not be established, it did not satisfy the criteria for prescribing as an occupational disease. Moreover, employees suffering from health problems caused by work pressure were not eligible for employees' compensation in most countries or places.

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23. To facilitate understanding of the magnitude of the problem, Mr SHIU Ka-chun requested the Administration to provide information on the proportion of teachers and social workers suffering from work-related emotional disorders. DC for L (OSH) said that he did not have such information on hand and would obtain relevant information from bureaux/departments and organizations concerned and provide the requisite information, if available, after the meeting.

Clinical consultation service of occupational health clinics

24. Mr POON Siu-ping expressed the view that strain of lower limbs should be prescribed as an occupational disease under ECO. Noting from the Annex to the Administration's paper that among the 334 confirmed cases of occupational diseases in 2016, 63 cases were tenosynovitis of hand or forearm, Mr POON sought information on the number of new cases involving strain of lower limbs or prolonged standing among the clinical consultations of the two occupational health clinics ("OHCs") in 2016 and whether such cases were work-related.

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25. DC for L (OSH) advised that there were new cases of lower limb illnesses among the clinical consultations at OHCs in 2016. Clinic doctors had examined each case with reference to the patient's comprehensive medical and occupational history, the circumstances of their work, and their body condition and lifestyle, and assessed whether the illness of the patient was work-related. DC for L (OSH) said that the information requested by Mr POON Siu-ping would be provided after the meeting.

26. Mr SHIU Ka-chun said that to his understanding, the labour sector criticized the clinical consultation service of OHCs for not meeting the service target of enhancing the health of the working population through prevention, diagnosis and treatment of work-related illnesses. Mr SHIU was concerned about how the Administration monitored the usage and effectiveness of OHCs. Mr SHIU called on the Administration to seriously consider conducting a comprehensive review on the operation of OHCs and make improvements as necessary. The Chairman raised a similar concern.

27. DC for L (OSH) advised that in 2016, OHCs provided more than 10 000 clinical consultations. Besides, the clinics organized health talks and workshops to enhance clients' knowledge on occupational health and health hazards identification, and hence minimizing their risk of contracting occupational diseases. LD had been closely monitoring the usage of OHCs, especially the waiting time for new cases, in order to assess the demand for the services of OHCs, and would make appropriate adjustments if necessary. While welcoming suggestions for improving the service of OHCs, LD would continue to promote the services of OHCs to employers and employees through health talks, large-scale public talks, seminars and distribution of pamphlets and posters, as well as broadcasting publicity videos in major public transport facilities from time to time. Besides, LD published advertisements on LD website, newsletters of unions and publications of OSHC to promote the services of OHCs.

28. Mr LUK Chung-hung was concerned that there were only two OHCs run by LD in Kwun Tong and Fanling to provide clinical consultation service to all employees in Hong Kong. Given that it was inconvenient for employees residing in other districts to travel afar for seeking clinical consultation at either OHC, Mr LUK called on the Administration to proactively consider setting up some more OHCs in other districts so as to meet the service needs.

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29. DC for L (OSH) responded that the two OHCs were located in proximity to various public transportation means and were considered to be easily accessible from most areas. The demand for clinical consultation service would be one of the considerations for the establishment of another OHC. According to the statistics kept by LD on the usage of OHCs, the average waiting time for new cases was around one to two weeks, which was considered acceptable.

Prevention of heat stroke at work

30. Referring to paragraph 12 of the Administration's paper, Mr POON Siu-ping sought information on the number of inspections of construction sites conducted by LD in 2016 for the purpose of preventing heat stroke at work as well as the relevant enforcement figures for non-compliance with the occupational safety and health ("OSH") legislation.

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31. DC for L (OSH) said that LD had conducted over 28 400 inspections targeting at outdoor workplaces with a higher risk of heat stroke, such as construction sites and horticulture workplaces, in 2016. LD had taken enforcement actions, including issuance of warnings, in respect of non-compliance with the OSH legislation. DC for L (OSH) would provide the enforcement figures as requested by Mr POON Siu-ping after the meeting.

32. In order to enhance OSH of employees working outdoor under hot weather or at workplaces with high heat stress, such as construction sites and kitchens, Mr LUK Chung-hung considered that heat stroke should be an occupational disease prescribed in ECO. He enquired about the considerations for not prescribing heat stroke as an occupational disease.

33. DC for L (OSH) said that ECO stipulated that if an employee sustained an injury or died as a result of an accident arising out of and in the course of employment, including injury or death resulting from an accident caused by heat stroke at work, the employer should be liable to pay compensation. On whether heat stroke at work should be prescribed as an occupational disease, consideration should be given to the causation criterion, i.e. diseases having specific or strong relationship with occupations and generally with only one causal agent. Notably, heat stroke at work did not meet such criteria. That said, similar to other work injury cases, employees suffering from heat stroke at work would

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be eligible for employees' compensation under ECO if they sustained an injury as a result of an accident caused by heat stroke arising out of and in the course of employment. According to the information available to LD, heat stroke was not categorized as an occupational disease in most countries/places.

Prevention of health hazard due to prolonged standing

34. Referring to paragraph 14 of the Administration's paper, Mr Tommy CHEUNG said that the Administration should provide employers in the retail and catering industries with relevant statistical findings to support the saying that work with prolonged standing could lead to various diseases due to continuous pressure at legs. For instance, the Administration should make available findings on the health hazard of prolonged standing at work posed to employees in the retail and catering industries, together with types of diseases contracted and types of work engaged by the employees concerned.

35. DC for L (OSH) advised that statistics on cases of lower limb illnesses could be collated from OHCs. However, it was noteworthy that strain of lower limbs was not an occupational disease and might be related to various factors other than work such as personal habits. Employees concerned did not necessarily seek medical consultation service of OHCs.

36. Mr Tommy CHEUNG reiterated that the Administration should consider to collate relevant statistics on health hazard due to prolonged standing, so as to convince employers in the retail and catering industries to implement appropriate preventive measures. DC for L (OSH) took note of Mr CHEUNG's suggestion.

Other issues

37. Mr LUK Chung-hung pointed out that some employees had not lodged compensation claims arising from work injuries simply because they were not aware of their entitlement to employees' compensation and the relevant procedures. He urged the Administration to step up its educational and publicity efforts in this regard.

38. Assistant Commissioner for Labour (Employees' Rights & Benefits) advised that LD carried out promotion through various channels, including placing advertisement on television channels to broadcast

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Announcements in the Public Interest, organizing talks and seminars, uploading the relevant information onto LD's website as well as distributing publications to widely publicize the procedures for making compensation claims for work injury and enhance the public's understanding on the relevant protection for employees. LD also worked in collaboration with the employers' associations and labour unions, through distributing relevant guidelines, to raise the awareness of employers and employees on work injury compensation claims.

V. Regulation of safety at work in confined spaces

(LC Paper Nos. CB(2)1891/16-17(01) and CB(2)1892/16-17(01))

39. The Chairman advised that in the light of the occurrence of the fatal industrial accident on 10 July 2017 at a construction site in Hung Hom in which three workers were killed when carrying out work related to hand-dug tunnelling ("the Accident"), the agenda item was added to the meeting to discuss the safety at work in confined spaces and measures to prevent the recurrence of similar accidents. The Chairman on behalf of the Panel expressed deepest condolence to the families of the three deceased construction workers.

40. Commissioner for Labour ("C for L") briefed members on the regulation of OSH at work in confined spaces by LD as set out in the Administration's paper.

41. C for L said that according to the information available to LD, hand-dug tunnelling was being undertaken in about 10 construction sites. LD would conduct inspections to these sites within a week. It was understood that depending on the topography and geology of the sites as well as traffic disruption and impact on residents in the vicinity, various methods including open-cut method or pipe jacking by making use of mechanized jacking machine would be adopted for underground utility works, and that hand-dug tunnelling method was not widely used. C for L further said that LD had arranged urgent meetings with the Construction Industry Council and industry stakeholders as well as relevant government departments to discuss how to prevent similar accidents. It was agreed that hand-dug tunnelling would be conducted only when alternative construction methods were not considered practicable in the relevant works projects. In addition, risk assessment for work in confined spaces should be carried out and OSH measures based on the assessment results should be taken accordingly. To

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safeguard workers' OSH, LD would issue a set of new guidelines on hand-dug tunnelling work ("the new guidelines") within 2017.

Follow-up on the Accident

42. Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr POON Siu-ping, Dr CHIANG Lai-wan, Mr LUK Chung-hung and Mr Jeremy TAM expressed grave concern about the death of three workers in the Accident. Dr CHEUNG, Mr POON and Mr LUK were particularly concerned about the risk assessment conducted prior to the occurrence of the Accident and the safety measures so adopted, as the three deceased workers had reportedly not worn safety harnesses when they were rescued and there was presence of poisonous gas in the tunnel. The Chairman, Dr KWOK and Mr SHIU Ka-chun queried about the effectiveness of the Administration's efforts in safeguarding occupational safety of construction workers concerned and preventing recurrence of similar accidents. Mr POON asked when the investigation findings of the Accident would be made available.

43. C for L advised that LD commenced an immediate on-site investigation upon knowing the happening of the Accident and issued suspension notices ("SNs") to the contractors/employer involved to suspend work relating to the laying of underground power cable. The contractors/employer could not resume the work process unless LD was satisfied that safety measures to abate the relevant risks had been taken. LD would complete investigation as soon as possible to identify the cause of the Accident and ascertain the liability of the duty holders, having regard to the fact that there was a statutory time limit for LD to take out prosecutions against law-breaching duty holders within six months. According to the initial findings of investigation of the Accident, there was a sudden rush of water into the tunnel and a small volume of low concentration of poisonous gas was detected at the scene.

44. Dr KWOK Ka-ki and Mr LUK Chung-hung, however, expressed concern about the difficulties in proving that an employer had intentionally committed an offence under the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO").

45. Dr Fernando CHEUNG and Mr POON Siu-ping expressed concern that in addition to the three fatalities in the Accident which involved underground power cabling work of the CLP Power Hong Kong Limited ("CLP"), another worker died in an industrial accident at CLP's Castle

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Peak power station in February 2017. Dr CHEUNG and Mr POON sought information on the counter-measures to be taken to prevent the recurrence of accidents in connection with CLP's works projects.

46. C for L responded that the Administration attached great importance to the two fatal industrial accidents concerning CLP's works projects. Following the occurrence of the power station industrial accident in February 2017, LD had issued an SN to CLP to suspend the work process concerned. An improvement plan submitted by CLP was being studied by LD and the relevant work process had not yet been resumed. In respect of the recent Accident, the Administration had met with the senior management of CLP to discuss measures to strengthen the regulation of CLP's works projects as well as to offer assistance to families of the three deceased workers. It was agreed that hand-dug tunnelling for underground cable laying would only be adopted under very special circumstances, say, when it was impracticable to adopt the open-cut or pipe jacking method for the relevant works projects.

Counter-measures to enhance occupational safety of tunnelling work

Site safety practitioners and risk assessment

47. With respect to the regulation of the OSH at work in confined spaces under the Factories and Industrial Undertakings (Confined Spaces) Regulation (Cap. 59AE) ("the Regulation"), Dr KWOK Ka-ki queried about the effectiveness of risk assessment conducted by "competent persons" engaged by the proprietors or contractors. Casting doubt about the independent role played by these site safety practitioners who were appointed by the proprietors or contractors to carry out risk assessment for work in confined spaces, Dr KWOK pointed out that it would be difficult for such persons to be proactive in reporting the contractors' non-compliance with OSH requirements. In his view, qualified site safety practitioners should be staffed by LD or engaged by proprietors/contractors through an independent intermediary agency so as to plug the loophole.

48. C for L advised that the OSH legislation stipulated the legal obligations of duty holders for undertaking construction works, including contractors' duty to ensure OSH of workers employed by them. Irrespective of whether the same contractor was responsible for the design and construction of the works, the contractor's legal obligation to protect the workers' OSH remained the same. The contractors should

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assess the potential risks and have them properly addressed before commencement of the works and carry out the works safely in accordance with the formulated safety method statements and comply with the contract requirements and relevant OSH legislation and guidelines. LD, on the other hand, would perform the regulatory role in conducting site inspections and take enforcement actions against non-compliance with the OSH legislation as well as minimizing hazards at workplaces through publicity and promotional efforts.

49. Expressing concern about the effectiveness of the risk assessment in relation to the hand-dug tunnelling work in preventing the occurrence of the Accident, Mr KWOK Wai-keung called on LD to step up its inspection efforts so as to strengthen the protection of workers' OSH. Mr LUK Chung-hung shared a similar concern and view. To reduce the risk associated with staying in a long tunnel for an extended period of time when undertaking hand-dug tunnelling work, Mr KWOK held the view that openings should be provided at regular intervals as safe access to and egress from the tunnel for access and rescue in case of emergency. C for L said that Mr KWOK's suggestion would be taken into consideration in drawing up the new guidelines.

Construction methods, inspection and enforcement

50. Mr Jeremy TAM was concerned about whether LD was aware of the hand-dug tunnelling work in the Accident and whether LD had conducted inspection to the worksite concerned prior to the commencement of the work. Mr TAM and Mr SHIU Ka-chun sought information on the number of similar worksites. Mr TAM further sought clarification as to whether prior approval from LD was required for carrying out hand-dug tunnelling work.

51. C for L said that no prior application was required for hand-dug tunnelling work. That said, as mentioned earlier, LD would conduct inspections to the 10 construction sites undertaking hand-dug tunnelling work within a week. As a matter of fact, LD had requested contractors concerned to carry out risk assessment again for all the hand-dug tunnelling work.

52. DC for L(OSH) said that contractors were required to notify LD of relevant works projects with the project duration and number of workers employed exceeding the specified limits. Assistant Commissioner for Labour (Occupational Safety) added that LD would conduct inspections

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to all worksites concerned upon receipt of the notification. According to LD's record, LD had not conducted any inspection to the worksite concerned before the Accident.

53. The Chairman expressed concern about how LD could get hold of the information on the number of worksites carrying out hand-dug tunnelling work. Dr Fernando CHEUNG said that according to the Association for the Rights of Industrial Accident Victims, there were about 50 to 60 works projects involving tunnelling work at present and more than 20 of these works projects were related to hand-dug tunnelling, which, in its view, should be discontinued. Mr SHIU Ka-chun was of the view that LD should issue SNs to the contractors/employer involved to suspend the hand-dug tunnelling work in the 10 worksites concerned until LD had completed the inspections.

54. C for L responded that according to the information available to LD, apart from the some 10 worksites carrying out hand-dug tunnelling, open-cut excavation was adopted on 47 worksites in addition to several tunnelling works projects adopting the pipe jacking method. LD would continue to discuss with the industry in drawing up the new guidelines.

55. Dr KWOK Ka-ki and Mr Jeremy TAM noted with concern that of the 636 inspections in relation to the works in confined spaces conducted by LD from 2014 up to May of 2017, 138 written warnings had been issued, i.e. over 20% of non-compliance with the relevant statutory safety requirements of the Regulation. To ensure OSH of workers undertaking hand-dug tunnelling work, Dr KWOK considered that it should be made mandatory for contractors concerned to obtain prior approval from LD for undertaking relevant hand-dug tunnelling work. Given the high risk of hand-dug tunnelling work, LD should also conduct regular inspections to the worksites to ensure the operations were in compliance with the OSH legislation. Pointing out that during the same period, LD only issued nine SNs and took out 31 prosecutions, Mr TAM considered the enforcement action insufficient to safeguard OSH of workers concerned. In his view, LD should conduct inspections to all worksites carrying out hand-dug tunnelling work before the publication of the new guidelines. Mr LUK Chung-hung considered that under no circumstances should work safety in the tunnelling works be compromised.

56. Responding to members' concerns and views, C for L said that each year LD conducted some 130 000 inspections to worksites and issued some 30 000 warnings for unsafe work practices so detected.

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The proportion of warnings issued in relation to work in confined spaces was therefore not particularly high. At the meetings subsequent to the Accident with the industry stakeholders and relevant Government departments, including the Water Supplies Department and the Drainage Services Department, and public utility companies, it was agreed in principle that hand-dug tunnelling would be adopted only when the use of alternative methods for constructing tunnels were not considered practicable. As compared with the existing "Code of practice for safety and health at work in confined spaces", the new guidelines to be issued within 2017 would set out more stringent requirements for conducting risk assessment and the necessary safety precautions in relation to the hazards identified in the hand-dug tunnelling work.

57. C for L added that LD had been stepping up enforcement efforts and launched special enforcement operations targeting at work-at-height safety and other high risk work processes to deter unsafe work practices since March 2017. LD would consider deploying additional manpower resources for inspection of hand-dug tunnelling work as necessary. It was expected that following the issuance of the new guidelines, the number of worksites carrying out hand-dug tunnelling work would not be many and it would be feasible for LD to conduct inspections to all worksites concerned.

Level of penalty

58. With respect to the 31 prosecutions taken out in relation to the works in confined spaces from 2014 up to May of 2017, Mr POON Siu-ping and Dr CHIANG Lai-wan sought information on the number of successful convictions and the penalty concerned. Mr POON considered the maximum penalty for breaching the Regulation (i.e. a fine of \$200,000 and an imprisonment for 12 months) too low to achieve the deterrent effect. To his understanding, some deputations had all along called on the Administration to conduct a review on the level of the penalty so as to enhance the deterrent effect of the penalty.

59. C for L responded that in respect of the 31 prosecutions taken out in relation to the works in confined spaces from 2014 up to May of 2017, the number of convicted summonses was 19 and the maximum amount of fine was \$80,000. C for L added that LD would, in consultation with DoJ, review the relevant provisions in relation to penalties under the OSH legislation, and amend the law if necessary to further enhance the deterrent effect of the penalty.

Action

Review of the Regulation

60. Dr CHIANG Lai-wan expressed concern about the occupational safety of workers in confined spaces, including those undertaking lift shaft works. Dr CHIANG enquired about when the last amendment to the Regulation was made. In her view, the Administration should conduct a review of the Regulation in order to strengthen the protection of workers concerned, such as provision of training and personal protective equipment as appropriate, after the release of the investigation findings of the Accident. Dr Fernando CHEUNG shared a similar view.

61. Having regard to the high risk associated with hand-dug tunnelling work, Dr Fernando CHEUNG, Mr POON Siu-ping and Mr SHIU Ka-chun asked whether the Administration would consider prohibiting using such construction method, as in the case of hand-dug caisson operation years ago.

62. DC for L (OSH) said that the last amendment to the Regulation was made in 2004. It was expected that the new guidelines would be released within 2017, and failure to observe the provisions in the new guidelines would be taken into consideration by the court in determining whether or not a person had breached the relevant safety and health requirements under FIUO.

63. C for L added that the use of hand-dug tunnelling was not encouraged under the new guidelines. However, due to technical and physical constraints, it would sometimes not be feasible to adopt other alternative methods in certain tunnelling operations. To minimize man-entry underground works and the related risk, it was recommended that tunnelling work should be carried out by open-cut or pipe jacking method as far as practicable. In addition, contractors/employers concerned should appoint registered safety officers/competent persons to conduct risk assessment and take all necessary safety precautions in relation to the hazards identified in the risk assessment report. Furthermore, appropriate procedures/arrangements for emergency evacuation or rescue should be formulated for implementation as appropriate. Relevant equipment should also be provided and kept readily available on the sites, such as sufficient supply of suitable approved breathing apparatus, safety harnesses and lifelines for rescue operations.

Action

VI. Review of statutory maternity leave

(LC Paper Nos. CB(2)1872/16-17(04) and (05))

64. The Chairman said that at the meeting on 18 April 2017 when the Research Office of the LegCo Secretariat briefed members on the key features of statutory maternity leave ("ML") in eight selected places, members agreed that the Panel should receive views from deputations on the provision of ML in Hong Kong.

65. Secretary for Labour & Welfare ("SLW") briefly took members through the provisions on ML under the Employment Ordinance (Cap. 57) ("EO") as set out in the Administration's paper. SLW added that as he and the current term Government had just assumed office, he welcomed the opportunity to gauge deputations' views on the matter and would consider the views as appropriate in his work ahead.

66. Members noted a background brief entitled "Review of statutory maternity leave" prepared by the LegCo Secretariat.

Presentation of views by deputations/individuals

67. At the invitation of the Chairman, a total of 19 deputations/individuals presented their views on review of statutory ML. A summary of views of these deputations/individuals is in the **Appendix**.

Discussion

68. Mr POON Siu-ping was concerned that the last reviews of a pregnant employee's entitlement to 10 weeks' ML and the rate of ML pay were conducted in 1981 and 1995 respectively, which now lagged far behind other neighbouring economies, such as Singapore. Mr KWOK Wai-keung, Mr LUK Chung-hung and Dr Helena WONG expressed similar concerns. Mr KWOK expressed disappointment that notwithstanding the repeated call from the labour sector for an extension of the current 10-week ML to 14-week ML as recommended by ILO, the Administration had not addressed it seriously. Dr WONG added that the Democratic Party was in support of extending the existing duration of ML from 10 weeks to 14 weeks and increasing the ML pay from four-fifths of the employees' daily wages to full pay. Furthermore, the duration of statutory paternity leave ("PL") should also be increased from three days to seven days with full pay. Mr LUK said that the Hong Kong Federation of Trade Unions ("HKFTU") advocated similar enhancements to the duration and pay rate of statutory ML.

Action

69. Dr Helena WONG drew reference to the findings of a ML study conducted by ILO among its 185 members in 2014. It was noted that among the 185 places studied, 53% (98 places) provided ML of 14 weeks or more, while 32% (60 places) provided ML 12 to 13 weeks. Only 15% (27 places) including Hong Kong provided ML of less than 12 weeks. Given the economic development in Hong Kong over the years, Dr WONG took the view that the Administration should conduct a review on the ML provisions in EO and that it would be affordable for employers to extend the duration of ML to 14 weeks. In the light of the ageing population and the need to replenish the workforce, Dr WONG remarked that the Administration should draw up complementary measures, including enhancing the ML benefits, so as to boost the low fertility rate. To meet the additional operation cost arising from enhancing ML benefits, consideration could be given to providing employers with financial incentives, such as tax exemption or deduction or bearing the additional cost fully by the Government.

70. Mr KWOK Wai-keung was unconvinced of the saying that extension of the statutory ML would cause significant increase in the operation cost of the small- and medium-sized enterprises ("SMEs"). In the light of low fertility rate in Hong Kong, the Administration should enhance the statutory ML and PL in support of its policy of promoting childbirth and family-friendly employment practices ("FFEPs"). Having regard to the divergent views of the business sector and the labour sector on enhancing the statutory maternity benefits, Mr KWOK and Mr POON Siu-ping expressed similar views that the Administration's stance towards the subject was of critical importance. Mr KWOK called on the Administration to make reference to overseas practices and consider funding the ML pay by social insurance or by the Government. Responding to Mr POON's enquiry, SLW said that the Administration did not have statistical information on how many enterprises/employers offered their employees with ML and PL benefits that were more favourable than the statutory requirements of EO. It would take some time for the Administration to collect such information.

71. Mr POON Siu-ping enquired whether the Administration had conducted any impact assessment on the operation cost of SMEs arising from enhancement of maternity benefits. Drawing reference to the enactment of a piece of new legislation on shared parental leave in the United Kingdom in mid-2015 to promote FFEP, Mr POON called on the new term Government to make improvement to the statutory maternity benefits as appropriate.

Action

72. Mr Tommy CHEUNG highlighted the operation difficulties of the small-, medium- and micro-sized enterprises ("SMMEs"). He cautioned that progressive enhancement of various employment rights and benefits, including ML and PL benefits, would further undermine the business environment for SMMEs.

73. Citing the experience of the Neighbourhood and Worker's Service Centre in providing its employees with 16 weeks' paid ML, two weeks' PL and one day of menstrual leave each month as appropriate, the Chairman said that the arrangement had not impeded the operation of the organization.

74. Mr LUK Chung-hung expressed concern about employment protection for employees upon expiry of ML. He said that HKFTU suggested extending the period of employment protection enjoyed by pregnant employees under EO, such that employers could not unreasonably dismiss employees within six months following the expiry of their employees' ML. In addition, issues relating to maternity benefits should be examined under the context of population policy.

75. Responding to members, SLW acknowledged the differences in the provision of statutory maternity benefits between Hong Kong and certain countries/places. The Government was open-minded on the subject of enhancing maternity benefits and would take note of various views on how the item could be improved.

76. In concluding the discussion, the Chairman requested the Administration to take heed of the concerns and views expressed by members and deputations/individuals attending the meeting, and revert to the Panel on the matter in the 2017-2018 session.

77. There being no other business, the meeting ended at 5:42 pm.

Panel on Manpower

Meeting on Tuesday, 18 July 2017, at 2:00 pm
Meeting to receive views on "Review of statutory maternity leave"

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation/individual	Submission / Major views and concerns
1.	The Civic Party	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1956/16-17(02)
2.	The Democratic Party	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1956/16-17(03)
3.	Community March	<ul style="list-style-type: none"> ● Disappointment was expressed that the existing statutory provisions on maternity leave ("ML") had remained unchanged since the latest legislative amendment in 1995. ● It was a pity that according to the study of the International Labour Organization in 2014 on ML provision of its 185 members, Hong Kong was among the 15% (27 places) providing ML of less than 12 weeks while other places providing ML of more than 12 weeks. ● To encourage childbirth, the Government should seriously consider extending the duration of ML.
4.	Hong Kong Catering Industry Association	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1912/16-17(01)
5.	Liberal Party	<ul style="list-style-type: none"> ● The existing provision of statutory ML was considered sufficient. ● The business environment for the small- and medium-sized enterprises ("SMEs") was already very difficult. Should the statutory ML benefits be further enhanced, the increase in the operation cost of SMEs would inevitably be transferred to customers. ● Extension of ML might not be very helpful to working mothers. Instead, the Government should allocate more resources to enhance the provision of subsidized child care services so as to address concerns of working mothers.
6.	Hong Kong Federation of Restaurants & Related Trades Limited	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1872/16-17(06)
7.	Hong Kong Ample Love Society Ltd.	<ul style="list-style-type: none"> ● The Government had provided pregnant employees with appropriate protection under various existing labour legislation, including the Employment Ordinance (Cap. 57) ("EO"). ● The Government should enhance the subsidized child care services to address the needs of working mothers. Consideration should be given to extending after-school care services to kindergarten and primary school students.

No.	Name of deputation/individual	Submission / Major views and concerns
		<ul style="list-style-type: none"> ● The Government should create an environment conducive to childbirth and facilitate females to enter or stay in the labour market. To this end, the Government should implement complementary policies as appropriate, including putting in place a licensing scheme with demerit points system to monitor and enhance the service quality of employment agencies providing placement service of foreign domestic helpers.
8.	Liberal Party Youth Committee	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1977/16-17(01)
9.	The Hong Kong Federation of Trade Unions Women Affairs Committee	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1872/16-17(07)
10.	自由黨醫療及健康政策關注組	<ul style="list-style-type: none"> ● Existing ML provisions under EO was considered appropriate. In the light of low unemployment rate, employees enjoyed bargaining power for more favourable employment terms and had many choices of jobs. As a matter of fact, maternity benefits provided by some enterprises to their employees were more favourable than the statutory requirements. It would be inappropriate for the Government to regulate provision of ML across-the-board, having regard to the varied operation modes of different trades and industries. ● Extension of ML was not the pressing need of working mothers. Instead, quality child care services could help address their need for child care. In the light of huge fiscal reserve, the Government should enhance the subsidized child care services.
11.	Association of Restaurant Managers Ltd	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1912/16-17(02)
12.	Mr LAI Ming-chak, Member of Sai Kung District Council	<ul style="list-style-type: none"> ● It was important to implement family-friendly employment practices ("FFEPs"), which was supported by Neo Democrats. The existing three-day statutory paternity leave ("PL") was barely adequate for fathers to take care of their newborns and partners. The Government should consider extending the duration of statutory PL to at least the same level as that of government male employees, i.e. five-day full pay PL. ● The Government should consider extending the duration of statutory ML to 14 weeks with full pay.
13.	PathFinders	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1912/16-17(03)

No.	Name of deputation/individual	Submission / Major views and concerns
14.	The Federation Of Hong Kong & Kowloon Labour Unions Women Affairs Committee	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1956/16-17(04)
15.	Institution of Dining Art	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1872/16-17(08)
16.	New People's Party Youth Commission	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1977/16-17(02)
17.	Miss Judy CHAN, Member of Southern District Council	<ul style="list-style-type: none"> ● It was necessary to conduct a review on the existing statutory provision of paid ML which had remained unchanged for two decades since the latest legislative amendment in 1995. ● While acknowledging the difficult business environment for SMEs, employers should consider adopting FFEPs and providing working mothers with flexible and varied work arrangements and support. On the other hand, the Government should enhance the subsidized child care services and consider providing financial incentives to employers, such as tax exemption or deduction, so as to encourage adoption of FFEPs.
18.	香港職工會聯盟婦女事務委員會	<ul style="list-style-type: none"> ● LC Paper No. CB(2)1956/16-17(05)
19.	Labour Party	<ul style="list-style-type: none"> ● Expressing support for extending the duration of statutory ML to 14 weeks with full pay. ● Employers of the catering sector had exaggerated the increase in operation cost for extending the duration of ML. ● Consideration could be given to providing financial incentives such as tax exemption or deduction to those enterprises offering maternity benefits, which were more favourable than the statutory requirements, to their employees. ● The Government should conduct a study on how to safeguard maternity benefits of female employees engaged in fragmented work.